such a right by proving the grant of this privilege to an individual.[19] However, the carrier cannot as a complement to this right, exclude an individual merely because he conducts a competitive business elsewhere.[20] Again it is well recognized under this head that a passenger affected with a disability of which the carrier knows, or has reason to know, is entitled to greater care and attention than an ordinary passenger.[21] This added responsibility the carrier should be free to decline especially where its assumption will hamper operatives.

Of course, if the applicant in such cases provides his own caretakers or is willing to pay for additional services, he must be accepted,[22] and in all cases the carrier is liable if an applicant rejected because of seeming incapacity to travel alone can establish his sufficient capacity.[23] It seems therefore that the right to refuse carriage on such grounds depends upon all the circumstances involved in a given case; no fixed tests seem adequate. This is well illustrated by the recent case of *Connors* v. *Cunard S. S. Co.* (Mass. 1910) 90 N. E. 601, in which the court sustained the defendant's refusal to carry by water an applicant who though accompanied by an attendant, was so ill that constant medical attendance was required. This demand upon the defendant was clearly excessive, and therefore unreasonable, since it amounted to a partial conversion of the ship into a hospital; a ground of refusal always recognized.[24] Its unreasonableness in this case was accentuated because the journey was by water. In the case of land carriage hospitals or other adequate facilities abound along the line and in case of necessity or extraordinary demand upon it, the carrier may relieve itself of a portion of the burden. The impossibility of this in a carriage by water clearly justifies a liberal view of the carrier's right to refuse, in such cases.

EQUITABLE PROTECTION OF EASEMENTS.—An easement, being in its nature an incorporeal right, obviously neither trespass[1] nor ejectment[2] will lie for its disturbance. The sole remedy at law is, therefore, an action on the case in which only the actual damages suffered by reason of the disturbance can be recovered.[3] Since there is a remedy at law it is evident that equity cannot claim jurisdiction merely from the fact that an easement is involved.[4] Consequently, to ground equitable jurisdiction, some facts must be alleged showing the inadequacy of the remedy thus afforded.[5] Thus, where the disturbance is of such a nature that damages cannot adequately compensate for the loss, the injury is

[19]The D. R. Martin (1873) 11 Blatchf. 233.

[20]Ford *v.* East Louisiana R. Co. (1903) 110 La. 414.

[21]Croom *v.* Chicago etc. Ry. Co. (1893) 52 Minn. 296.

[22]Pullman Car Co. *v.* Barker (1878) 4 Colo. 344; Croom *v.* Chicago etc. Ry. Co. *supra.*

[23]Zachery *v.* M. & O. R. R. Co. (1896) 74 Miss. 520; Illinois Central R. Co. *v.* Smith (1904) 85 Miss. 349.

[24]Croom *v.* Chicago Ry. Co. *supra.*

[1]Wetmore *v.* Robinson (1818) 2 Conn. 529.

[2]Fritsche *v.* Fritsche (1890) 77 Wis. 270.

[3]Cushing *v.* Adams (Mass. 1836) 18 Pick. 110.

[4]Oswald *v.* Wolf (1889) 129 Ill. 200.

[5]Sanderlin *v.* Baxter (1882) 76 Va. 299.

said to be irreparable and the jurisdiction of equity plainly attaches.[6] Frequent illustrations of such injuries are those which seriously interfere with one's trade or business,[7] or which, being permanent, amount to a constantly recurring grievance for which a jury cannot properly determine and assess damages.[8] In like manner, if the disturbance is repeated or continuous, the law has no power to prevent its repetition, and can give relief only by means of numerous actions for damages. Such a remedy is plainly inadequate and consequently equity will assume jurisdiction in order to relieve the plaintiff from the hazard of such litigation.[9]

Even though the remedy at law is inadequate, equity will not ordinarily extend its relief if the plaintiff's right is in dispute, but will require him to first establish his title in an action at law.[10] A mere denial is not, however, sufficient to preclude the court from granting its aid, for the facts must be such as to show a substantial dispute.[11] Consequently, if the right, though formally denied, is yet clear on facts which are undisputed, equity will grant relief without requiring a prior adjudication as to the legal rights of the parties.[12] But if from the facts of the case the court is unable to determine the validity of the plaintiff's title, the usual practice is to retain the cause until he has had a reasonable time within which to establish his right at law.[13]

It is evident, however, that the circumstances may be such that to delay relief until the plaintiff has formally established his right would subject him to irreparable damage. In such cases, the court in the exercise of its discretion, will grant a preliminary injunction in order to preserve the *status* of the parties until the final determination of their respective rights.[14] As a general rule, however, a mandatory injunction will not issue on a preliminary hearing.[15] It seems, however, that if the plaintiff's title is substantially clear and if the continuance of the wrong would subject him to a considerable loss, whereas the issuance of the decree would not seriously inconvenience the defendant, the courts will restore the parties to their former position by means of such an injunction.[16]

Although some courts have held that, even assuming the plaintiff's title to be clear, the issuance of a final injunction lies always in the discretion of the court,[17] yet such would not seem to be the rule

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[6]Newell *v.* Sass (1892) 142 Ill. 104.

[7]Webber *v.* Gage (1859) 38 N. H. 182.

[8]Miller *v.* Lynch (1892) 149 Pa. St. 460.

[9]Thorpe *v.* Brumfitt (1873) L. R. 8 Ch. App. 650; Cadigan *v.* Brown (1876) 120 Mass. 493.

[10]Hart *v.* Leonard (1886) 42 N. J. Eq. 416; Rhea *v.* Forsyth (1860) 37 Pa. St. 503.

[11]Miller *v.* Lynch *supra.*

[12]Hodge *v.* Giese (1887) 43 N. J. Eq. 342; Kelley *v.* Saltmarsh (1888) 146 Mass. 585; Lowery *v.* City of Pekin (1900) 186 Ill. 387; Winsted Land Co. *v.* Gt. Eastern Ry. Co. (1872) L. R. 10 Ch. App. 586.

[13]Todd *v.* Staats (1900) 60 N. J. Eq. 507; King *v.* McCully (1860) 38 Pa. St. 76.

[14]Murphey *v.* Harker (1902) 115 Ga. 77.

[15]National Docks etc. Ry. Co. *v.* Penn. R. R. Co. (1895) 54 N. J. Eq. 10.

[16]Hodge *v.* Giese *supra.*

[17]Richard's Appeal (1868) 57 Pa. St. 105; Daniels *v.* Keokuk Waterworks (1883) 61 Iowa 549.

if the purpose of the action is simply to restrain the infliction of a threatened wrong. If, on the other hand, final relief is sought by means of a mandatory injunction, commanding specific reparation of the wrong, the courts will, under certain circumstances, take into consideration the comparative convenience and inconvenience which a grant or refusal of the injunction would cause the parties.[18] Thus, if the defendant has acted innocently and if the issuance of the injunction would operate inequitably or oppressively,[19] or if the injury complained of is not serious as compared with the damages which the defendant must suffer in order to restore the property to its former condition,[20] the courts will deny relief if the plaintiff can possibly be compensated by damages. Moreover, the right to an injunction may be lost because of unreasonble delay in prosecuting the action if the defendant's rights appear to have been seriously prejudiced thereby.[21] But where the defendant has acted in spite of notice of the plaintiff's right, an injunction will issue regardless of the inconvenience which may result,[22] because in such cases he is considered to have acted at his peril and the court will not compel the plaintiff to sell his property at such a valuation as the jury, in assessing damages, may place upon it.[23]

A recent case, *Webb* v. *Jones* (Ala. 1909) 50 So. 887, is illustrative of the application of these principles in an action brought by a reversioner for the protection of his easement. In that case the defendant, having obstructed a way to the complainant's property, resisted his right to an injunction on the ground that the premises were in the possession of a tenant. It is evident that in order to maintain an action either at law or equity the plaintiff must show actual damage to the reversion itself, for an injury to the estate of the tenant would vest a right of action in him rather than in the owner of the reversion.[24] Since in the case under discussion, the wrong clearly operated in denial of the plaintiff's right,[25] and was of such a nature as to be impossible of adequate compensation in damages,[26] the court properly issued an injunction ordering that the obstruction be removed.

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[18]Berkeley *v.* Smith (Va. 1876) 27 Gratt. 892.

[19]Brand *v.* Grace (1891) 154 Mass. 210.

[20]Hall *v.* Rood (1879) 40 Mich. 46; Welsh *v.* Taylor (N. Y. 1888) 50 Hun 137.

[21]Starkie *v.* Richmond (1892) 155 Mass. 188.

[22]Tucker *v.* Howard (1880) 128 Mass. 361.

[23]Dent *v.* Auction Mart Co. (1866) L. R. 2 Eq. 238; Krehl *v.* Burrell (1876) L. R. 7 Ch. Div. 551.

[24]Cooper *v.* Crabtree (1881) L. R. 19 Ch. Div. 193; Tinsman *v.* R. R. Co. (1855) 25 N. J. L. 255; Hastings *v.* Livermore (Mass. 1856) 7 Gray 194; Atkins *v.* Chilson (Mass. 1844) 7 Metc. 398.

[25]Met. Assn. etc. *v.* Petch (1857) 5 C. B. (N. S.) 504.

[26]Schaidt *v.* Blaul (1886) 66 Md. 141; Lakeman *v.* Hannibal & St. Joseph R. R. Co. (1889) 36 Mo. App. 363.